

Justice or Just Us?

A zine about dealing with
police and the law for

OCCUPY SYDNEY



Put together by members of
the Justice Tracks Collective
justicetracks.org.au





We recognise and pay respect to the Aboriginal nations and Traditional Owners of this land. We acknowledge that this land was and always will be an integral part of the cultural and spiritual histories of Aboriginal peoples.

We recognise that sovereignty has never been ceded.

This zine was created on the land of the Gadigal people of the Eora nation. If you are reading this, you are on Aboriginal land.

Contents

Preparation and dealing with police	3
Preparing for an Occupation	
Police Searches	
Video and Photography	
Police Liaison	
Know your rights, know your risks	9
So you got arrested ...	
Offences	
Questioning the law	21

This booklet or 'zine' has been written and compiled by Justice Tracks, an activist law collective based in Sydney. It aims to be a resource to guide you through the legal aspects of protest and to help you make informed decisions about taking direct action. This zine should not be read as formal legal advice.

Know your rights, know the risks, take care and go strong!

Love from Emma, Gem, Oliver, Scarlet, Wenny and Zoe xox

*Section One:
Preparation and
Dealing with Police*



Preparing for an Occupation

Sun protection!

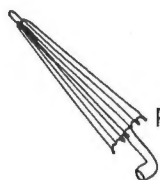


If you wear contacts,



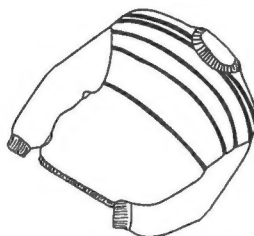
it's a good idea to wear glasses instead to protect your eyes and contacts, especially if the police use capsicum spray

Fully charged mobile phone with credit



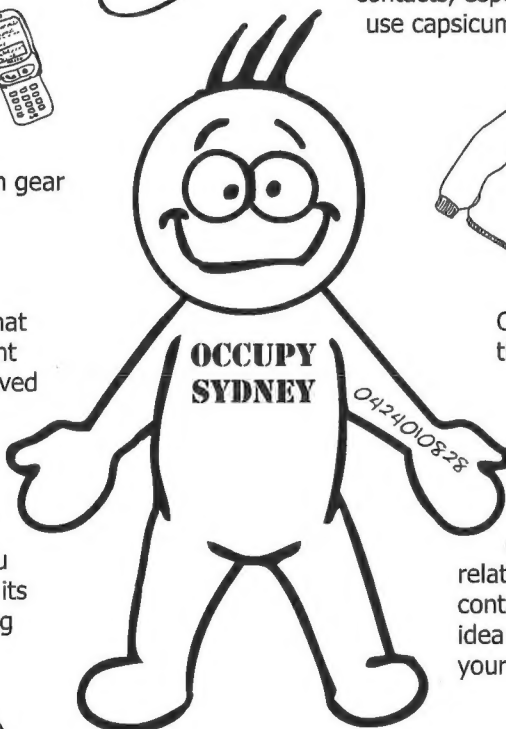
Rain gear

Any jewellery that might get caught should be removed



Clothing that suits the weather!

Any medicine you need - keep it in its original packaging



Emergency phone numbers of a friend, relative and legal contact. It's a good idea to write them on your skin as well



Money for transport and phone calls



Comfy shoes

Enough food and plenty of water for the day

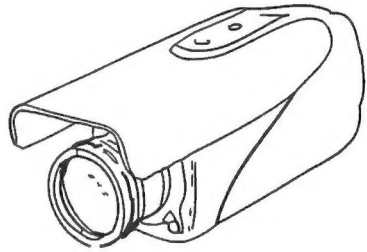


Police Searches

The law supposedly limits the circumstances in which the police can search you. In reality, it can be easy for the police to establish a "reasonable suspicion" that you have something on you that the law says you shouldn't, and it can be difficult to say no to the police if they ask to search you. What are some strategies for responding to police's demands?

Under the law, the police can search you:

- If you consent to being searched;
- If you are under arrest;
- If the police have a warrant to search you;
- If the police declare the area an "emergency lock-down zone";
- If the cops "reasonably suspect" that you have in your possession: stolen goods, a dangerous implement (including knives and anything made to cause injury), something intended to be used for a serious offence (e.g. a weapon suspected of being used in a robbery). The cops can take these items from you.



The police can search your car if they "reasonably suspect":

- You have stolen property or drugs or there's a "dangerous implement" in your car;
- The car was used in relation to a serious offence;
- That "circumstances exist" that are likely to give rise to a serious risk of public safety and that searching the car would lessen that risk.

How should police perform a search?

The police **CAN'T**:

- Search and question you at the same time.

The police **SHOULD**:

- As much as "reasonably practicable", conduct searches by someone of the same gender, and searches should also be done in private.

The police **CAN**:

- Ask you to open your mouth, shake your hair, or take off your shoes and jacket;
- Pat you down; and
- Do a strip search if they are reasonable satisfied that the "seriousness and urgency of the circumstances require" a strip search.

Do you have to give your name to the police?

You **ONLY** have to give your name, and address, to the police in these situations:

- You're under arrest;
- You're driving a car or are a passenger in a car;
- You're under 18 and police suspect you of carrying or drinking alcohol in public;
- Police suspect you of an offence on public transport;
- Police believe on reasonable grounds that you may have been a witness to a serious crime; or
- 'Emergency' powers have been declared.

Video and Photography

Police have been known to warn and detain individuals, and grab at or seize equipment from people who film their activities.

However, it is your right to photograph, film and record sound in a public place, particularly for non-commercial purposes. **This includes police who are working in public places.**

According to the Arts Law Centre, it is your right to:

- Photograph/film/record sound in a public place.
- Photograph/film/record sound from a public place into a private space as long as 'it can be seen from the street' and you are not recording something indecent e.g. sexual activity, or to provide sexual arousal, etc.
- Photograph/film/record sound in a private space if you have permission from the owner or representative.

The Surveillance Devices Act 2007 states that it is illegal to record a private conversation where one of the parties does not know about or want the recording of the conversation. Police have used this to warn people they see filming them.

BUT ... this does not include a conversation where those involved ought reasonably to expect that it might be overheard by someone else, which includes a conversation in a public space.

The police can stop you filming if you are hindering their line of duty. If you decide to film it is best to keep enough distance between you and the police so that a claim of hindering their line of duty is not possible and so they cannot reach your camera.

Police Liaison

A group of people taking action can decide to have a police liaison. The role of the police liaison is to speak with police about things that have been agreed to by the group. The person is NOT a decision-maker for the group. Here are some tips for the police liaison:

Before the action:

- Your main role will be to try and negotiate with police in the interests of the people involved in the action. Make sure you've discussed your role with the group, including your scope and limits in negotiating with police.
- Know important details of people in your group, including full names, contact details, details of their contact people and medical needs. Make sure you understand their boundaries and what they do and don't want shared with the police.
- Know your legal rights and the phone numbers of legal support.

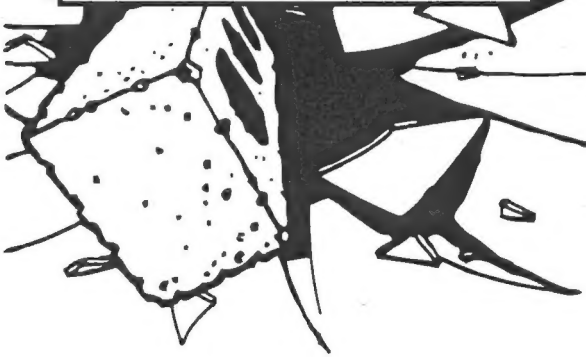
During the action:

- Have a notepad and pen so you can keep a record of events and police officers' names and actions.
- You may like to identify yourself as the police liaison to police.
- Be professional and polite, but always on guard with police. Remember, there is no such thing as an 'off the record' conversation with police.

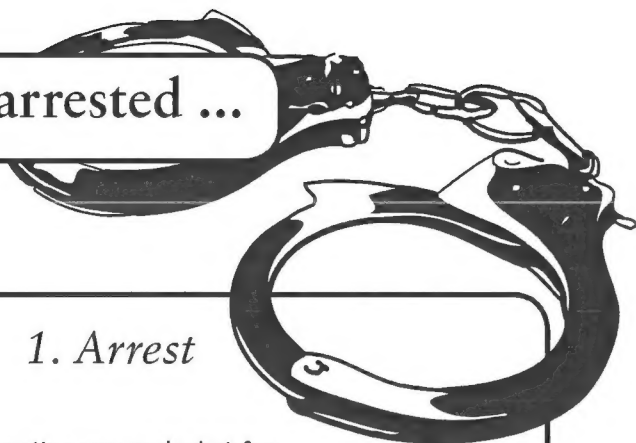
It is useful for everyone in the action to be aware of police behaviour and to record it - take notes and use cameras or phones.

Section 2:

*Know Your Rights,
Know the Risks*



So you got arrested ...



1. Arrest

The police should:

1. tell you that they are arresting you and what for,
2. make it clear that you are not free to go.

It is worth watching whether the police do these two things, as it may be used later to prove that the arrest was unlawful.

Once you've been arrested, the police have four options:

- Off to the cop shop in the paddy wagon to get processed;
- Police might issue "Field Court Attendance Notices" so you skip the cop shop and go to court later on;
- They can issue on the spot fines meaning: no cop shop, court or charges; or
- They can decide to release you.

2. Before and at the cop shop, do I have to answer their questions?

Except for giving your name and address, you have the right to remain silent. Be prepared for police to be persistent with their questioning. It's often best to keep saying "no comment" even to really obvious questions so it looks like you have nothing at all to hide or say.

3. At the cop shop - in custody

A person called the custody manager will take your belongings and document what you have. Your things will be returned to you once you've been processed.

Whilst in custody, you have the right to things like water, 'reasonable' refreshments and medical attention - ask the custody manager.

The police will take your photograph and fingerprints. Later on if you're found not guilty or not given a conviction, you can ask for these to be destroyed.

You have the right to communicate with a friend or relative AND a lawyer. You can ask them to come to the station and the police must take reasonable steps to allow you to talk to the person in private.

If you're a "vulnerable person" e.g. under 18 or Aboriginal or Torres Strait Islander, you have extra rights like having a support person with you.

This whole arrest process should not go for more than 4 hours. However, this time doesn't include things like travel time to the station. Feel free to remind the custody manager that your 4 hours is up!



4. Getting Charged

The police may decide either to charge you or release you without charge.

- If charged, the police will give you a fact sheet with their version of the alleged offence and a Court Attendance Notice (with the charge) to appear in court, usually 2-3 weeks later. Unless you are refused bail or refuse your bail conditions, you will be released on bail.
- If released without charge, this is probably the end of the matter; however the cops may send you a summons to appear in court later.

What's this bail business?

Bail means that you're released on the condition that you will appear in court on a specified date. If you've been charged, the police will either release you on bail or refuse bail:

- The police might impose certain conditions on your bail agreement e.g. don't return to the protest site for 2 weeks.
- You don't have to agree to the conditions, but that means you'll stay in custody until the matter goes to court as soon as possible for a magistrate to decide the conditions.
- It is an offence to breach your bail conditions. This may result in a new offence and might make it harder to get bail in the future.
- If bail is refused, you'll go to the local court as soon as "reasonably practicable" - you might be held overnight. When brought before court, you have the right to access a Legal Aid lawyer to represent you in an application for bail.



5. Going to Court

Once released on bail, you generally have two weeks before your first appearance in court. If you would like legal advice about your matter, you can speak to a lawyer and decide whether you will plead guilty or contest the charge.

Pleading guilty

If you plead guilty, you will be sentenced then and there. This is the fastest way to resolve the court process but involves accepting the punishment the court decides to impose, unless you decide to appeal the decision. If it is your first offence, the court has the discretion to give you a 'Section 10' (found guilty but no conviction recorded).

Pleading not guilty

If you plead not guilty, your case will be resolved over a longer period of time and a number of court appearances. During this process, charges may be dropped or new ones added. Depending on a number of factors, including the seriousness of the charge, this process can take 6 months or longer. During this time you may be subject to ongoing bail conditions. You will generally be required to appear in court for brief periods every few months or so.



Offences

The following pages go through some of the possible offences that activists may be charged with. Whether and what kind of charges are laid depends on numerous factors including the kind of action being taken, but many are largely down to police discretion. Unfortunately the legal system and police reinforce the prejudices of our society and those from marginalised groups or identities (such as Indigenous, racial and religious minorities ...) are often even more repressed by the legal system.

We haven't included all the penalties for the offences, particularly as they can vary. Please contact us if you would like any more specific information or have any questions.

Offences at protests that can be avoided

Be wary of the following offences. Police can use them indiscriminately at protests and often they can be avoided.

Offensive language

It is an offence to use offensive language without a reasonable excuse in a public place, even if you don't think the language is offensive. The maximum fine is \$660.

Possession of prohibited substances, knives or tools and spray paint

It is an offence to carry drugs, knives and spray paint. The chance of being searched at a rally is much higher, so you would be wise to avoid having these items on you during protests and actions.

Hinder police and resist arrest

It is an offence to resist or hinder a member of the police force in the execution of her/his duty, including the making of an arrest. 'Resist' means opposing by the threat or use of force. 'Hinder' means making an arrest or other police action more difficult. Whether or not lying down is 'resisting' is a grey area of law.

It is also an offence to incite someone else to assault, resist or hinder police. Incitement means to rouse, stimulate, urge or spur on, stir up or animate. It is not necessarily restricted to starting or initiating. The maximum penalty is 12 months imprisonment or an \$1100 fine.

Assault police

Related to the offence of hindering police and resisting arrest is an offence to assault or wilfully obstruct police, and other officers, in the execution of their duties. Assault can be both physical and verbal. So, threats of violence to police in the heat of the moment can have serious consequences. Attempting to cross police lines can also amount to assaulting police. Generally, the maximum penalty for this charge is 5 years imprisonment.

Disguises

Under the Crimes Act, it's an offence where someone has their face blackened or otherwise disguised, or has in their possession the means of blackening or otherwise disguising their face, with intent to commit a felony or misdemeanour.

Some common offences used at protests

Trespass

Trespass is a very common public order offence often used against protestors and picketers. A person may be charged with trespass if they enter into "inclosed lands" without lawful excuse or the consent of the person in charge of those lands, or they remain on those lands after being asked to leave.

"Inclosed lands" includes any lands, public or private, surrounded by a fence or barrier or even partially by a fence or barrier. It also includes lands surrounded by a natural feature such as water. The usual penalty is a \$200 fine but can be as much as \$1,100.

Property damage

Property damage involves damaging property either intentionally or recklessly. The maximum penalty is 5 years imprisonment for extreme cases of damage. However, our experience is that generally people only receive fines of \$200-\$400.

"Locking on" - using a device to prevent your removal from a restricted area or a piece of machinery - has traditionally resulted in a charge of trespass. Recently, there have also been attempts to use 'malicious damage' or property damage as a further charge; however these attempts have usually been unsuccessful.

Obstructing traffic

This offence involves blocking the free passage of a person, vehicle or vessel in a public place. The maximum penalty is \$440.

Breaching 'Move On' orders

Under the relevant Act, a police officer may give a direction to a person in a public place if the police officer believes on reasonable grounds that the person's behaviour or presence in that place:

- a) is obstructing another person or traffic, or
- b) constitutes harassment or intimidation of another person or persons, or
- c) is causing or likely to cause fear to another person, so long as the conduct would be such as to cause fear to a person of "reasonable firmness", or
- d) is for the purpose of unlawfully supplying any prohibited drug, or
- e) is for the purpose of obtaining, procuring or purchasing any prohibited drug.

For the purposes of point c), no person of reasonable firmness need actually be, or be likely to be, present at the scene.

There are also move on powers in relation to intoxicated persons in public places.

Under these powers, if you refuse to comply with a move on order you are likely to be arrested and charged with failure to comply with a police direction.

However ...

There are limitations on the exercise of these powers.

A police officer is not authorised to give directions (including a move on direction) in relation to:

- a) an industrial dispute, or
- b) an apparently genuine demonstration or protest, or**
- c) a procession, or
- d) an organised assembly.



Uncommon but possible offences

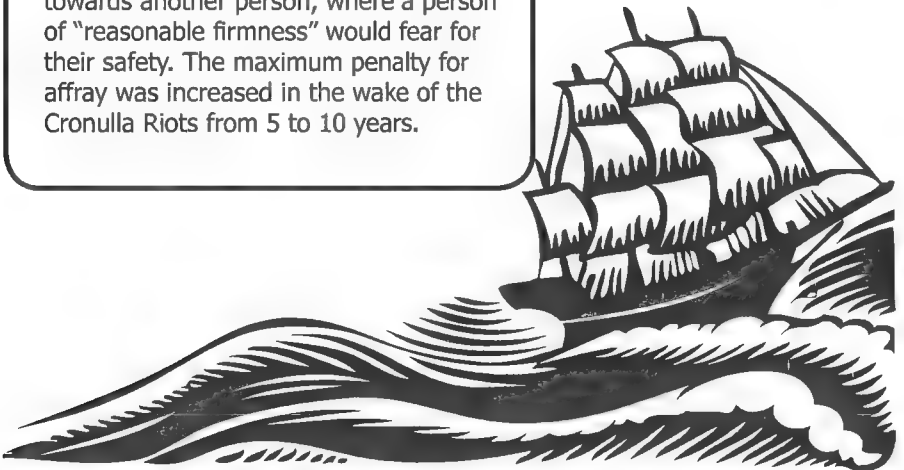
These offences are sometimes used in the context of high profile demonstrations.

Riot

The offence of riot is defined as an offence where 12 or more persons together use or threaten to use violence. Violence is defined broadly as including any violence towards property as well as persons. The maximum penalty for riot is 15 years imprisonment.

Affray

The offence of affray occurs where a person threatens or uses violence towards another person, where a person of "reasonable firmness" would fear for their safety. The maximum penalty for affray was increased in the wake of the Cronulla Riots from 5 to 10 years.



Unlawful assembly

Charges for this offence have been very rare. However, it should be noted that it is still used.

The offence is defined when a person “knowingly joins an unlawful assembly or continues in it”. The maximum penalty is 6 months imprisonment for unlawful assembly; however it is much more common for protestors to be charged with offences such as obstructing traffic.

Notice may be given of a public assembly to the Police Commissioner 7 days before the proposed event under the Summary Offences Act (NSW) section 23. If the Commissioner doesn’t oppose the assembly or the Supreme Court doesn’t issue an order prohibiting the event, then it is an “authorised assembly”. Just because an assembly is unauthorised doesn’t necessarily mean that it is illegal; however authorisation means that the offences of unlawful assembly and obstruction are inapplicable.

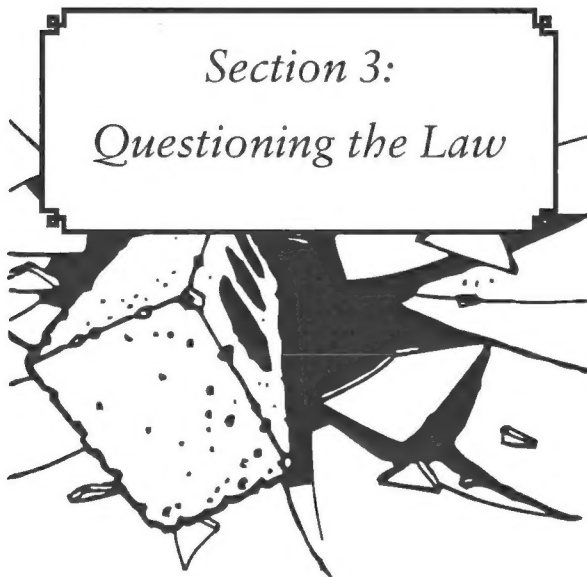
Note that if the police use “emergency” powers they can give you a “move on” order, and it’s an offence not to follow it.



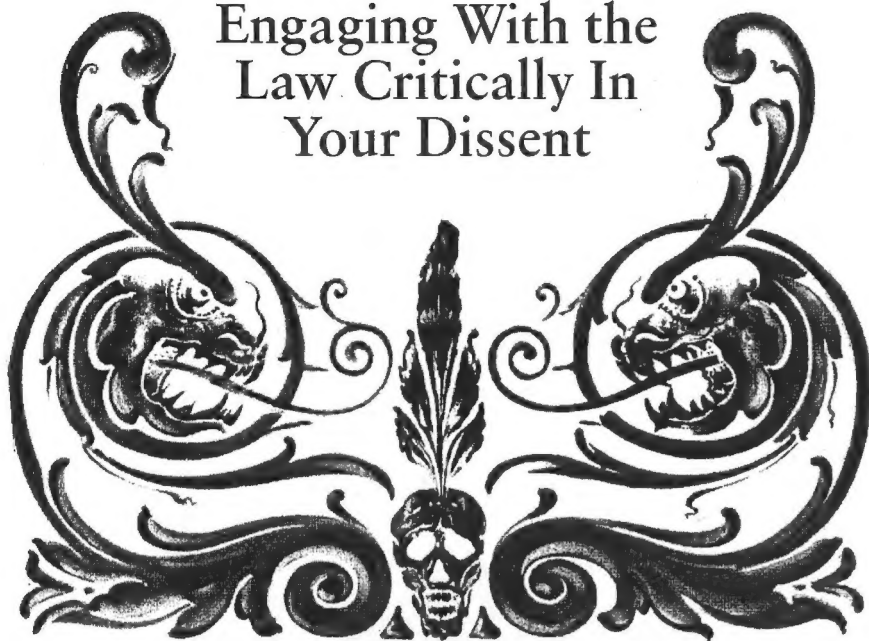
Conspiracy

The offence of conspiracy occurs when two or more people plan to commit a criminal offence or a tort (civil wrong).

Section 3:
Questioning the Law



Engaging With the Law Critically In Your Dissent



The law is often presented as fixed and reserved for lawyers, judges and the police. But police and judges are given wide-ranging discretion about how they enforce the law. They can often be erratic, ignorant, conservative or angry. Unfortunately these biases often reflect the discrimination that is already rife in the Australian political and legal system.

Sadly being informed about how the law works is not always enough. Essentially while knowing your rights, learning about the law and having a plan are great ideas, there will always be a degree of unpredictability.

However, we don't have to sit on our hands or accept this chaos. Instead we can do more than just know the law - we can develop strategies to respond to its unpredictability and power. Many of us also have the privilege to be proactive and creative in the way we engage with the law. Here are some ideas that may get you thinking around the "mystique" of law.

De-arresting

A group of people may decide, either in advance or in response to an attempted arrest, that they will act together to try and prevent that person being arrested. This may involve holding onto or pulling a person whom police are attempting to remove, or pulling at or obstructing the police as they attempt to arrest someone.

Please note that resisting arrest and hindering or assaulting police are all offences in their own right.

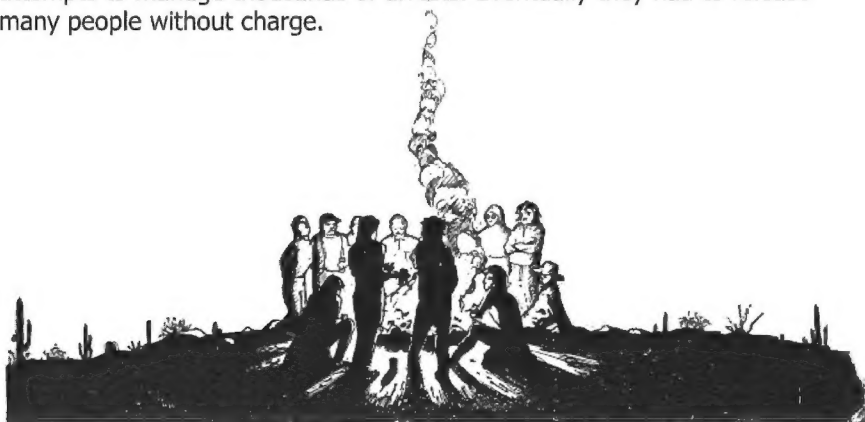
De-escalation / escalation

The police are trained to control conflict. When they are asking people to be quiet and orderly, attempting to force people back or hitting people, they are attempting to manage the conflict in a way that suits them. Having a plan about how to respond to this conflict can help to retain your power in the situation. For example everyone sitting down and going silent may be a powerful way of responding to a push or police charge.

Alternatively, planning to link arms and push back may help you achieve your objectives. Recognising that conflict may occur and having a plan can make the difference between a successful and an unsuccessful action.

Non-cooperation

Non-cooperation is an attempt to collectively undermine the power of the police to control or manage a situation. Many people arrested at the Seattle protests in 1999 refused to give their details to the police when being processed at the station, thus slowing down the process and frustrating police attempts to manage thousands of arrests. Eventually they had to release many people without charge.



Take Home Messages

1. Be prepared, look after yourself and your mates
2. Know your rights, know the risks
3. Besides giving your name and address to police in certain situations, you don't have to answer their questions. Ask "Am I free to go?"
4. Practice saying "I'm not saying anything, I want to speak to a lawyer"
5. Be street-smart, use your judgement and never trust a cop

Legals Collective contacts:

info@justicetracks.org.au

Other legal contacts:

LawAccess - NSW legal info and advice

1300 888 529

Aboriginal Legal Service

8303 6600

Young Offenders' Advice Line

1800 101 810

